

STATE OF SOUTH CAROLINA

(Caption of Case)

IN RE:

Happy Rabbit, LP on Behalf of,

Windridge Townhomes, Complainant,

v.

Alpine Utilities, Inc., Respondent

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2008 - 360 - S

(Please type or print)

Submitted by: Richard L. WhittSC Bar Number: 62895Address: Austin & Rogers, P.A.Telephone: 803-251-7442508 Hampton Street, Suite 300Fax: 803-252-3679Columbia, South Carolina 29201Other: 803-256-4000Email: rlwhitt@alrlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiouslyOther: Routine

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit of Publication	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certificatio
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certification of Mailing	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Return	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input checked="" type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input checked="" type="checkbox"/> Other: Direct Testimony of James C. Cook
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

**DIRECT TESTIMONY OF
JAMES C. COOK
On Behalf of
WINDRIDGE TOWNHOMES
January 27, 2009**

PSCSC Docket No. 2008-360-S

**Q. PLEASE STATE YOUR NAME, ADDRESS, AND RELATIONSHIP WITH
WINDRIDGE TOWNHOMES.**

A. My name is James C. Cook and my address is 608 Southlake Road
Columbia, S.C. 29223, and I am a general partner of Happy Rabbit, a South
Carolina Limited Partnership, the owner and operator of Windridge Townhomes
(hereinafter, "Windridge").

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. To support and explain the Complaint filed in this docket by Windridge.

**Q. ARE YOU FAMILIAR WITH THE COMPLAINT FILED BY WINDRIDGE
TOWNHOMES? IF YES, PLEASE EXPLAIN THE COMPLAINT.**

A. Yes. Windridge currently receives sewer service from Alpine Utilities, Inc
(hereinafter "Alpine"). Alpine has unlawfully required Windridge to maintain a
utility customer relationship with Alpine. Alpine requires Windridge to be
financially responsible for the sewer utility accounts of forty-six customers,
residing in Windridge's twenty-three duplexes. I have personally contacted
Alpine Utilities, Inc. to demand that Alpine establish a customer relationship
with each of Windridge's tenants living in the duplexes, in compliance with
South Carolina law. I spoke with Attorney John Hoefer via telephone
concerning Alpine's lack of compliance with South Carolina Law.

DIRECT TESTIMONY OF
JAMES C. COOK
On Behalf of
WINDRIDGE TOWNHOMES
January 27, 2009

PSCSC Docket No. 2008-360-S

1 **Q WHAT IS THE BASIS FOR YOUR STATEMENT THAT ALPINE IS NOT IN**
2 **COMPLIANCE WITH SOUTH CAROLINA LAW?**

3 **A.** Section 27-33-50, Financial responsibility of tenant for utilities.

4 (A) Unless otherwise agreed in writing, a tenant has sole financial
5 responsibility for gas, electric, water, sewerage, or garbage services
6 provided to the premises the tenant leases, and a landlord is not liable for a
7 tenant's account.

8 (B) An entity or utility providing gas, electric, water, sewerage, or garbage
9 services must not:

10 (1) require a landlord to execute an agreement to be responsible for all charges
11 billed to premises leased by a tenant; or

12 (2) discontinue or refuse to provide services to the premises the tenant leases
13 based on the fact that the landlord refused to execute an agreement to be
14 responsible for all the charges billed to the tenant leasing that premises.

15 (C) This provision does not apply to a landlord whose property is a multi-unit
16 building consisting of four or more residential units served by a master meter
17 or single connection. ("Emphasis supplied")

18 **Q.** **IN YOUR CONVERSATIONS WITH REPRESENTATIVES OF ALPINE, DID YOU**
19 **INFORM THEM OF THE SPECIFIC STATE LAW WITH WHICH THEY ARE NOT**
20 **IN COMPLIANCE? IF SO, WHAT WAS THEIR RESPONSE?**

21 **A.** Yes. Attorney Hoefer promised to speak with Robin Dial of Alpine and one of
22 them would contact me, but I never received any further communication from
23 Alpine's representatives, after I informed them about Alpine's non-compliance
24 with the requirements of Section 27-33-50.

**DIRECT TESTIMONY OF
JAMES C. COOK
On Behalf of
WINDRIDGE TOWNHOMES
January 27, 2009**

PSCSC Docket No. 2008-360-S

**1 Q. IN YOUR FORMAL COMPLAINT YOU PROMISED TO ESCROW A MONTHLY
2 AMOUNT EQUAL TO ALPINE'S SEWER CHARGES, HAS THAT BEEN DONE?**

3 A. Yes.

**4 Q. WHAT RELIEF ARE YOU SEEKING FROM THE PUBLIC SERVICE
5 COMMISSION OF SOUTH CAROLINA?**

6 A. I am seeking an Order from this Commission requiring Alpine to comply with
7 South Carolina Law. Specifically, I want the Commission to require Alpine to
8 establish individual sewer utility accounts with all of Windridge's tenants.

**9 Q. HAVE YOU FILED AN ACTION AGAINST ALPINE IN THE CIRCUIT COURT?
10 IF SO EXPLAIN.**

11 A. Yes. I filed Civil Action No. 2008-CP-40-6619. That action is to recover money
12 damages from Alpine.

**13 Q. WHY DID YOU FILE BOTH A COMPLAINT WITH THIS COMMISSION AND
14 AN ACTION IN CIRCUIT COURT?**

15 A. I filed the Complaint with this Commission, asking this Commission to declare
16 the utility customer relationship required by Alpine to be unlawful under South
17 Carolina Law. This Commission cannot award money damages, therefore I
18 filed an appropriate action in Circuit Court to recover those damages. A copy of
19 the Circuit Court Action is attached hereto as exhibit "A".

20 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

21 A. Yes.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE CIRCUIT COURT FOR THE
) FIFTH JUDICIAL CIRCUIT
)

) CASE NO.: 08-C/A-40-
)

Happy Rabbit, a South Carolina Limited
Partnership and Carolyn D. Cook,
Plaintiffs,

v.

) COMPLAINT
) (JURY TRIAL DEMANDED)
)

Alpine Utilities, Inc.,

) Defendant.
)

Plaintiffs, Happy Rabbit, a South Carolina Limited Partnership (hereinafter, "Plaintiff Happy Rabbit") and Carolyn D. Cook (hereinafter, "Plaintiff Cook"), complaining of the Defendant, would allege and show unto the Court as follows:

JURISDICTION

1. Upon information and belief Defendant, Alpine Utilities, Inc., (hereinafter, "Alpine") is a utility incorporated under the laws of the state of South Carolina, with its principal place of business located in Richland County, South Carolina and currently conducting business in Richland County, South Carolina.

2. Plaintiff Happy Rabbit is the owner and operator of Windridge Townhomes, located in the 3300 block of Kay Street in Columbia, South Carolina (Richland County) (hereinafter, "Windridge") and Plaintiff Cook is a General Partner of Happy Rabbit.

3. The acts complained about herein occurred in Richland County, South Carolina.

4. The acts complained about herein are in violation of South Carolina Statutes under the jurisdiction of this court.

5. Therefore, jurisdiction and venue in this Court is proper

COURSE AND PATTERN OF DEALINGS

BETWEEN THE PARTIES

6. Paragraphs one through five above, are re-alleged.

7. Happy Rabbit is the owner and operator of Windridge Townhomes, located in the 3300 block of Kay Street in Columbia, South Carolina (Richland County) and has been so since December

29, 2005, until the date of these presents. Prior to that date, ownership of Windridge was with Plaintiff Cook, namely through December 28, 2005.

8. Plaintiff Cook and later Plaintiff Happy Rabbit, entered into a utility customer relationship with Alpine for the provision of sewer services to Windridge. The utility required Plaintiff Cook and continues to require Plaintiff Happy Rabbit to enter into a business relationship, whereby Plaintiffs were responsible for payment of monthly sewer bills for the forty-six tenancies in the twenty-three duplex apartment buildings. Furthermore, Plaintiffs paid a definite monetary sum to Defendant Alpine on a monthly basis for a period exceeding three years, and therefore Plaintiffs' damages are ascertainable.

9. Alpine insisted and continues to insist that Plaintiffs be responsible for the sewer accounts for all tenants located in Windridge. Plaintiffs protested that such an arrangement was improper, but Alpine refused to change the character of sewer services to Windridge and required and continues to require Plaintiff Happy Rabbit to be responsible for the same. Defendant Alpine's actions, in requiring Plaintiffs to be responsible for its tenant's sewer services were unfair and deceptive.

FOR A FIRST CAUSE OF ACTION AGAINST ALPINE
(VIOLATION OF § 27-33-50)
(S.C. CODE OF LAWS ANN., (1976, AS AMENDED))

10. Paragraphs one through nine above, are re-alleged.

11. (§ 27-33-50, S.C. CODE OF LAWS ANN., (1976, AS AMENDED)) Reads in pertinent part as follows:

(A) Unless otherwise agreed in writing, a tenant has sole financial responsibility for gas, electric, water, sewerage, or garbage services provided to the premises the tenant leases, and a landlord is not liable for a tenant's account.

12. Defendant's actions, in requiring the Plaintiffs to be responsible for the sewer services of their forty-six tenancies (twenty-three duplex buildings), is in direct contravention of § 27-33-50, S.C. CODE OF LAWS ANN., (1976, AS AMENDED) and affected trade and commerce within the state of South Carolina.

FOR A SECOND CAUSE OF ACTION AGAINST ALPINE
(VIOLATION OF SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT.)
(§ 39-5-10 et seq., S.C. CODE OF LAWS ANN., (1976, AS AMENDED))

13. Paragraphs one through twelve above, are re-alleged.

14. Defendant Alpine's actions described above, are in clear violation of the statute set forth hereinabove in detail.

15. Defendant Alpine's actions described above, are an unlawful trade practice such that: (i) the Plaintiffs both suffered actual and clearly ascertainable damages (ii) there is an adverse impact on the public interest (iii) Defendant Alpine's actions are offensive to public policy, unethical, unfair, deceptive, and oppressive and (iv) are unfair trade practices capable of repetition.

DEMAND FOR JURY TRIAL

16. Paragraphs one through fifteen are re-alleged.

17. Plaintiffs demand that this matter be heard before a trial jury.

PRAYER FOR DAMAGES

WHEREFORE,

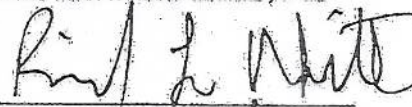
Plaintiffs are entitled to damages and a Judgment as follows:

FOR A FIRST CAUSE OF ACTION against Defendant Alpine, Plaintiffs are entitled to recover Twenty Two Thousand Three Hundred and Fifty Six Dollars (\$22,356) and a finding that, as a matter of law and under the facts of this case, Defendant Alpine cannot require Plaintiff Happy Rabbit to be responsible for sewer services provided to its tenants.

FOR A SECOND CAUSE OF ACTION against Defendant Alpine, Plaintiffs are entitled to recover Sixty Seven Thousand and Sixty Eight Dollars (\$67,068) plus the recovery of a reasonable Attorney's fees and the costs incurred in this Action.

FOR SUCH OTHER AND FURTHER RELIEF AS THIS COURT MAY DEEM JUST AND REASONABLE.

Respectfully Submitted,
AUSTIN & ROGERS, PA



Richard L. Whitt
508 Hampton Street, Suite 300
Columbia, South Carolina 29201
(803) 256-7442
Attorney for Plaintiffs

September 12, 2008
Columbia, South Carolina

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-360-S**

IN RE:

Happy Rabbit, LP on Behalf of,
Windridge Townhomes,

Complainant,

v.

Alpine Utilities, Inc.,

Respondent

CERTIFICATE OF SERVICE

I, Jessica Yun, an employee of Austin & Rogers, P.A., certify that I mailed a copy of the Direct Testimony of James C. Cook with Exhibit in the above referenced matter via U.S. mails as addressed below, with proper postage affixed thereto, on January 27, 2009.

Attorney Benjamin P. Mustian
P.O. Box 8416
Columbia S.C., 29202-8416

Austin & Rogers, P.A.

/S/
Jessica Yun

Columbia, South Carolina
January 27, 2009